

Message Text

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ACTION EUR-12

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USEEC

E.O. 11652: N/A
TAGS: EEC, ECSM
SUBJ: EC COMMISSION PROPOSAL ON MISLEADING ADVERTISING

REF: 77 ECA 316

1. THE EC COMMISSION SENT ITS DRAFT PROPOSAL CONCERNING MISLEADING AND UNFAIR ADVERTISING TO THE EC COUNCIL ON MARCH 1, 1978. THE PROPOSAL IS DESIGNED TO HARMONIZE THE WIDELY DIVERGENT LAWS IN THE MEMBER STATES AND IS ONE OF THE PRIOR ACTIONS DETAILED IN THE COMMUNITY'S 3-YEAR CONSUMER PROTECTION PROGRAM (REFAIR).

2. ADVERTISING IS BROADLY DEFINED IN THE PROPOSAL TO COVER THE DIVERSITY OF ADVERTISERS AND MEDIA EXCLUDING ONLY POLITICAL ADVERTISING, ADVERTISING BY PRIVATE INDIVIDUALS AND PUBLICATIONS OF COMPARATIVE TEST RESULTS BY INDEPENDENT ORGANIZATIONS. FALSE OR PARTIALLY FALSE CLAIMS, OMISSION OF RELEVANT FACTS, DEFAMATORY, DISCRIMINATORY OR PREJUDICIAL ADVERTISING ARE DEFINED AS UNCLASSIFIED

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MISLEADING OR UNFAIR ADVERTISING. THE BURDEN OF PROOF RESTS UPON THE PLAINTIFF, UNLESS THE ADVERTISER MAKES A FACTUAL CLAIM. MEMBER STATES ARE DIRECTED TO PROVIDE "QUICK, EFFECTIVE AND INEXPENSIVE FACILITIES" WHICH PERMIT INDIVIDUALS OR ASSOCIATIONS WITH A LEGITIMATE INTEREST TO INITIATE LEGAL PROCEEDINGS. COMPARATIVE ADVERTISING, WHICH HAS BEEN ILLEGAL IN A NUMBER OF MEMBER

STATES, IS PERMITTED "AS LONG AS IT COMPARES MATERIAL AND VERIFIABLE DETAILS" AND IS NEITHER MISLEADING OR UNFAIR.

3. THE DRAFT DIRECTIVE HAS BEEN APPROVED IN PRINCIPAL BY THE MOST ESTABLISHED CONSUMER GROUP, THE BUREAU OF EUROPEAN CONSUMER'S UNIONS (BEUC), BUT BEUC DOES NOT BELIEVE THE PROPOSAL GOES FAR ENOUGH IN PROTECTING THE CONSUMER. THEY SUGGESTED CREATION OF A SUPERVISORY BOARD IN EACH COUNTRY TO MONITOR AND CONTROL ADVERTISING ACTIVITY AND A BROADER SCOPE TO INCLUDE UNFAIR MARKETING PRACTICES. IN ADDITION, BEUC SUGGESTS THAT SPECIAL ATTENTION BE PAID TO MULTINATIONAL COMPANIES AND SPECIFIC SAFEGUARDS FOR THE MOST VULNERABLE TARGETS, I.E. CHILDREN, THE AGED, AND PRODUCTS SUCH AS PHARMACEUTICALS, ALCOHOL AND TOBACCO BE INCLUDED.

4. A PRELIMINARY DISCUSSION IN THE WORKING GROUP OF THE ECONOMIC AND SOCIAL COMMITTEE WAS ALSO POSITIVE. EC COMMISSION OFFICIALS RESPONSIBLE FOR CONSUMER AFFAIRS BELIEVE THE PROPOSAL WILL BE ADOPTED WITH MINOR OR NO MODIFICATIONS IN EARLY 1979. CERTAIN OFFICIALS HAVE SAID THEY CONSIDER THE PROPOSAL WEAKER THAN IT SHOULD BE, BUT THAT IT WAS MORE POLITICALLY ACCEPTABLE IN ITS PRESENT FORM. HINTON

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